



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 4, 1998

Ms. Linda Wiegman
Supervising Attorney
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR98-2605

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 119520.

The Texas Department of Health (the "department") received a request for a copy of the report of contact for the complaint survey conducted on June 4, 1998 at Hospice of East Texas. You assert that portions of the records, which you have marked, are made confidential by state statute or by the informer's privilege and therefore are excepted from required public disclosure under section 552.101 of the Government Code.

Government Code section 552.101 excepts from disclosure information that is made confidential by law, including information made confidential by statute. You inform us that Hospice of East Texas is a home and community support service agency licensed by the department. Section 142.009 of the Health and Safety Code authorizes the department to conduct investigations regarding the provision of home health, hospice, or personal assistance services. Section 142.009(d) provides:

(d) the reports, records, and working papers used or developed in an investigation made under this section are confidential and may not be released or made public except:

- (1) to a state or federal agency;
- (2) to federal, state, or local law enforcement personnel;
- (3) with the consent of each person identified in the information released;

- (4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule; or
- (5) on a form developed by the department that identifies deficiencies found without identifying a person, other than the home and community support services agency.

The documents used or developed during a department investigation under chapter 142 are generally confidential with limited exceptions.

Specifically, an agency that has been investigated by the department has a statutory right of access to certain information relating to the investigation. Section 142.009(g) provides as follows:

- (g) After a survey of a home and community support services agency by the department, the department shall provide to the chief executive officer of the agency:
 - (1) specific and timely written notice of the preliminary findings of the survey; including
 - (A) the specific nature of the survey;
 - (B) any alleged violation of a specific statute or rule;
 - (C) the specific nature of any finding regarding an alleged violation or deficiency; and
 - (D) if a deficiency is alleged, the severity of the deficiency;
 - (2) information on the identity, including the signature, of each department representative conducting, reviewing, or approving the results of the survey and the date on which the department representative acted on the matter; and
 - (3) if requested by the agency, copies of all documents relating to the survey maintained by the department or provided by the department to any other state or federal agency that are not confidential under state law.

It appears from the submitted records that the department has completed its investigation of Hospice of East Texas. The requestor, here, is the executive director of Hospice of East Texas. Section 142.009(g) requires the department to provide the chief executive officer of

the agency with the requested information to the extent that the release of the information is not otherwise made confidential under state law.

We note that the report of contact contains information made confidential by the Medical Practice Act (the "MPA"), V.T.C.S. article 4495b. Section 5.08 of the MPA provides:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

(c) Any person who receives information from confidential communications or records as described in this section other than the persons listed in Subsection (h) of this section who are acting on the patient's behalf may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

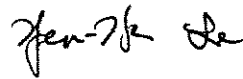
V.T.C.S. art. 4495b, § 5.08. Section 5.08(j)(3) also requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Thus, access to medical records is not governed by chapter 552 of the Government Code, but rather the MPA. Open Records Decision No. 598 (1991). Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* V.T.C.S. art. 4495b, § 5.08(a), (b), (c), (j); Open Records Decision No. 598 (1991). We have marked the information on the report of contact that is subject to the MPA. The department may only release this information in accordance with the MPA.

Lastly, you assert that, under section 552.101 of the Open Records Act, the informer's privilege excepts certain information from public disclosure. However, in Open Records Decision No. 598 (1991), this office explained that statutes governing access to a specific subset of information held by a governmental body prevail over the generally applicable Open Records Act. *See* Open Records Decision Nos. 478 at 2-3 (1987) (Open Records Act does not govern special rights of access granted under other statutes), 451 (1986) (statutory predecessor to section 552.103 inapplicable to investigative file to which subject is granted access by other statute). Thus, except for information subject to the MPA, the remainder of the information must be released to the requestor pursuant to section 142.009(g) of the Health and Safety Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 119520

Enclosures: Marked documents

cc: Mr. Michael C. Crouch
Executive Director
Hospice of East Texas
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Tyler, Texas 75703
(w/o enclosures)